

WORKSHOP MINUTES
**PROPOSED REGULATION OF THE NEVADA TRANSPORTATION
AUTHORITY OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**
LCB FILE NO. 169-09 / NTA DOCKET NO. 09-10024
HELD AT THE NEVADA TRANSPORTATION AUTHORITY
LAS VEGAS AND RENO, NEVADA
March 5, 2010

Present at the meeting representing the NTA:

Chairman Andrew J. MacKay
Commissioner Michael J. Kloberdanz
Commissioner Monica B Metz
Administrative Attorney Jim Day
Chief of Enforcement Mike Bradford
Applications Manager Liz Babcock
Financial Analyst Yvonne Shelton
Investigator Gina Reynolds

Present at the meeting representing the Nevada
Attorney General's Office:

Senior Deputy Attorney General David Newton, Esq.

Present at the meeting:

See attached sign-in sheets for attendance

Handouts were provided to all attendees of the workshop. A copy of the handouts are attached hereto and incorporated herein by reference.

Chairman MacKay called the workshop to order at 9:30 am.

Chairman MacKay welcomed the attendees and introduced himself, Commissioner Monica Metz, Commissioner Michael Kloberdanz, and Administrative Attorney Jim Day. He then described the format for the day's discussions of the draft regulation as an open forum.

Charles Dickerson asked if this was the correct forum for a complaint.

Chairman MacKay stated that if there is an open complaint or investigation it could not be heard because that could cause conflict with the hearing officers present.

Charles Dickerson stated that his car was towed the Sunday after Thanksgiving despite being legally parked. The tow was deemed illegal but he wants more than just his money refunded. He received no apology and it cost him time from work.

Jim Day stated that the NTA only has jurisdiction to order the refund, however the Justice Court might have the authority to order loss of wages or loss of use damages.

Commissioner Kloberdanz thanked Mr. Dickerson for putting this issue on record for the industry.

Charles Dickerson stated that people need to speak up when they've been wronged.

Chairman MacKay thanked Mr. Dickerson for his comments.

Michael Keller (AAA Nevada) stated that, regarding page 26 section 24 [proposed changes to NAC 706.410 requiring that a log of visitors to a vehicle be maintained by tow car carriers], in addition to the tow bills indicating that the vehicle was visited, he would like the bill to indicate who visited the vehicle.

Chairman MacKay asked if the proposed regulation meets that requirement.

Michael Keller stated that he believes the draft regulation matches what is currently done.

Chairman MacKay stated that it is his understanding that the law is completely silent regarding who may have looked at the vehicle.

David Newton, Esq. stated that if the language is enacted as proposed it would allow the Authority to view the log but not the insurance companies.

Chairman MacKay stated that this was discussed during the drafting process, the intent was to have it included on an itemized bill and it may fall short on that.

Commissioner Metz stated that it may fall short on allowing insurance companies direct knowledge, but it does allow the Authority to view the logs if there is a complaint filed.

Liz Babcock stated that adding the provision for those other than the Authority to view the logs may reduce the number of complaints received by the Authority.

Chairman MacKay asked Mr. Keller and Mr. Geeser if they had any proposed language regarding this issue.

Michael Geeser (AAA Nevada) stated that he would be happy to submit something.

Chairman MacKay thanked them.

Commissioner Kloberdanz clarified that the issue is “who is that person?”

Michael Keller (AAA Nevada) stated that they want to be able to confirm the purpose of whoever visits the vehicle.

Dennis Milk (LVVI, CPCN 7108) stated that this can raise a privacy issue and he does not allow just anyone to go to the vehicle without proving they have a right to do so.

Chairman MacKay requested that proposed language be submitted in writing and thanked Commissioner Metz for drafting 98% of the proposed regulations.

Clark Whitney (Snap Towing, CPCN 7042) stated that as a practical matter there might be people visiting who are not the agents of the owner, for example, if someone wants to sell the car as salvage or if the car is involved in an accident and the person at fault may wish to see it.

Chairman MacKay asked if Mr. Whitney was proposing that it be defined who an authorized agent is.

David Newton, Esq. stated that it is not currently defined in NAC 706.

Clark Whitney (Snap Towing, CPCN 7042) stated that the owner of the other car cannot look but his insurance can.

Scott McCollum (City Auto Towing, CPCN 7205) stated support for Mr. Whitney's concerns regarding the other person's insurance company coming to look at the car.

David Newton, Esq. one of the concerns he has is that according to NAC 706.420, the billing must be substantiated and he believes it cannot be without listing who visited the vehicle.

Commissioner Metz believes that the bill should state the date as well as the person who visited the vehicle.

David Newton, Esq. believes that if the information is included on the bill it will reduce the number of potential complaints that will be filed with the Authority.

Scott McCollum (City Auto Towing, CPCN 7205) stated concerns that bills may end up being 15 pages long for a tow. There may be a situation with one or a few companies, but it is not an overall problem in the business. He is agreeing with the regulation but believes that the carriers who are overcharging the insurance companies should be fined.

Clark Whitney (Snap Towing, CPCN 7042) maybe tow companies need to think about if the names are on a list and on a bill, it will serve as proof that the car is known to be there.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) stated there is no implied agency and anyone going to visit a vehicle should be an actual authorized agent of the vehicle owner. He also asked for clarification on whether the visits are one per individual or one per car and whether "when the vehicle is being claimed" means when someone takes possession of the vehicle or when someone comes in and simply claims ownership of the vehicle without getting the vehicle out of impound?

David Newton, Esq. stated that he could see Mr. Sawin's point and it should maybe say "recovered."

Commissioner Metz agreed.

Joe Causey (Custom Towing, CPCN 7061) stated concerns for when the insurance company says they're not paying for someone's visit, for example the other driver's company.

Michael Keller (AAA Nevada) stated that he has never refused to pay a bill in order to get the vehicle released. He just wants clarification on who visited.

Joe Causey (Custom Towing, CPCN 7061) stated that when someone comes to visit a car he copies the driver's license and business card.

Michael Keller (AAA Nevada) stated that it's not a regulation but many tow yards do the same.

Matt Frank (Farmers Insurance) stated that if his representative is the only one to see the vehicle, they are still being charged.

Chairman MacKay stated this is a violation of the current regulation.

Matt Frank (Farmers Insurance) stated that the insurance agent is not being considered an agent of the insured and also stated that if the free visit were listed on the tow bill it would substantiate the other visits being charged.

Rex Ewing (Ewing Bros Towing, CPCN 7023) stated that his company tracks all visitors via computer and the adding of a signature would complicate things because it would require a hard-copy log. He also submitted a bill listing the free visit and the subsequent charged visits.

Chairman MacKay stated that it looked like Mr. Ewing was in compliance with the draft regulation.

Commissioner Metz pointed out that he was just missing the signature, but does not see a reason not to remove the signature portion of the draft regulation.

Michael Keller stated that he realizes most tow operators are already in compliance, but is asking to be able to access the records to verify. He also asked if two agents visit at the same time, are they charged for two visits?

Dennis Milk (LVVI, CPCN 7108), Joe Causey (Custom Towing, CPCN 7061), Rex Ewing (Ewing Brothers d/b/a Walker Towing, CPCN 7023) all stated that is one visit.

Chairman MacKay stated he would have a hard time seeing that as two charges.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) asked if the tow bill was where the insurance companies wanted to see the information.

Matt Frank (Farmers Insurance) and Michael Keller (AAA Nevada) stated the bill is fine.

Chairman MacKay asked for any further comments regarding section 24 of the proposed regulations and, hearing none, asked if anyone had another point of discussion.

Michael Geeser (AAA Nevada) stated that the other two issues were the clarification of tow tariff language and the uniform definitions in numbers 1 and 2 of the second handout [Additional Proposed Amendments for Discussion].

Commissioner Metz clarified that one suggestion was from Staff and the other was from written comments.

Michael Keller (AAA Nevada) stated that if the “facilitate” charge were better defined it could be more uniformly charged.

Chairman MacKay asked if it was a general comment as it is not in the draft regulations or if Mr. Keller was requesting that it be in the regulations or more accurate in the tariff itself.

Michael Keller (AAA Nevada) stated that tow companies are not on the same page.

Michael Geeser (AAA Nevada) stated that he would prefer uniform definitions be added to the regulations so that everyone is operating under the same definitions thereby making the whole process smoother.

Michael Keller (AAA Nevada) next mentioned the clean-up charge and how it is charged for both cars on the scene.

Chairman MacKay asked if the regulation as currently drafted addresses the issue of individual tows happening simultaneously and how they are billed.

Liz Babcock stated that some tow companies charge by the hour (time from leaving the domicile to time they return) and can bill both vehicles for the whole time. She questioned how to charge for clean up time when each vehicle is charged the whole time for the tow.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) stated that he doesn't understand the issue, if company A is charging almost half the time company B charges for clean up, why not let the market take care of it?

David Newton, Esq. stated that most of these are police tows so there is no choice involved.

Clark Whitney (Snap Towing, CPCN 7042) said that when you are at the scene of an accident you can't really tell what debris is from which car. If you send out two guys with two trucks and they're both cleaning, how should it be divided up? Should you have to clean for an hour before you can charge? He also added for Ms. Babcock that if you are charging hourly, you should not be charging additional amounts for clean up. He also stated that it seems some tariffs were approved that were not understood and usually clean up takes a half hour unless you need to call in the street sweeper.

Chairman MacKay stated that Liz Babcock, Yvonne Shelton, and Lidia Aronova are all doing a phenomenal job on analyzing tariffs.

Michael Keller (AAA Nevada) stated that when there are multiple insurance carriers involved, he doesn't know if he's being charged half, or a whole amount or who's being charged for which portions.

Lis Babcock asked if two vehicles should be specifically addressed in the tariff.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) asked if there would be another workshop.

Chairman MacKay stated for the record that all NTA staff nodded in the affirmative.

Michael Geeser (AAA Nevada) had a question regarding lien fees but realized it was a legislative issue and will raise it at a different time.

Steve Paloian (Farmers Insurance) asked a question regarding bills that are exactly the same with only the make and model changed.

Joe Causey (Custom Towing, CPCN 7061) stated that when you're towing two vehicles from the same scene, the standby is for both cars, the clean-up is for both cars and the dispatcher stamps it all. Two

separate tickets would have matching times because it is a single call. The dispatcher stamps at the gate because in the past drivers would delay going into the yard.

Clark Whitney (Snap Towing, CPCN 7042) asked if you have a timed tow and one car is on the flatbed while the other is taken to a body shop, how you charge.

Michael Keller (AAA Nevada) asked about tape fees for windows when the keys are in the car.

Joe Causey (Snap Towing, CPCN 7042) stated that when an appraiser goes out and realizes that a charge shouldn't be there, it is removed. Usually it is an issue with the guys in the yard not paying attention to whether the keys are accessible.

Michael Keller (AAA Nevada) stated he's made multiple calls to fix such charges when the keys were in the car or the vehicle had manual windows.

Matt Frank (Farmers Insurance) stated that he has asked why the fees were charged and has been told it was unsafe for the tow driver to get in the car in cases where the tow driver got into the vehicle to put it in neutral and do other things. He also brought up the question of dual charges relating to standing around for 30 minutes for a rollover and charging both cars.

Michael Keller (AAA Nevada) also asked for a definition for start time.

Chairman MacKay asked if that is currently in the regulation.

Commissioner Metz stated that tariffs are supposed to set forth when start times begin.

Liz Babcock agreed that it is supposed to say in the tariffs but there may be some old ones that do not.

Chairman MacKay clarified that some tariffs do not define start times.

David Newton, Esq. stated that NAC 706.420 would require tow companies to capture the start time.

Commissioner Metz stated that all companies do capture it, but the tariff states when they charge.

Michael Keller (AAA Nevada) requested that for uniformity, it should be defined in the regulation.

Commissioner MacKay noted the request to specify the rule in regulation.

Michael Keller (AAA Nevada) asked for clarification regarding when set-out fees are charged.

Chairman MacKay clarified the request.

Commissioner Metz stated that each carrier's rules are stated on their tariff, but are not uniform and realizes that uniformity is what is being requested.

Matt Frank (Farmers Insurance) stated that when he calls, the tow companies say that a set-out fee would not be charged, but on the tow bills they were.

Commissioner Metz stated that she understands it is when a tow yard does not want someone else on their lot and so sets a disabled vehicle out so that another tow carrier can access the vehicle.

Liz Babcock noted that even when a car is not disabled, it may still be set out to limit liability on their lot.

Chairman MacKay asked a question regarding the charge of a set-out fee.

David Newton, Esq. stated that he has been asked on several occasions if a set-out fee was correctly charged and from a prosecution standpoint, definitions would make it much easier to deal with complaints. He also stated that he had a proposal for a regulation change to NAC 706.420 (1)(i) and (k) to change the language to a full odometer reading.

Commissioner Metz asked why a full reading would be needed.

David Newton, Esq. responded that it eliminates conjecture on what the mileage is and it conforms to how the regulation is usually interpreted but not how it is currently written.

Michael Keller (AAA Nevada) stated it would be helpful because there are bills that state only 2 digits and they might say 20/32 for one tow and 25/35 for another.

Clark Whitney (Snap Towing, CPCN 7042) stated that writing the whole odometer takes a lot of extra time and also added that if the first numeral is a zero the computer will not take it. He also stated that some drivers use the trip odometer.

Commissioner Metz asked if the last 4 numbers of the reading would be sufficient.

Clark Whitney (Snap Towing, CPCN 7042) stated that there may be a tow where a car is picked up at a different site and that can lead to the numbers in the middle.

Joe Causey (Custom Towing, CPCN 7061) stated that the way the computers are set up, the receipt shows the whole number but the driver's ticket might not.

Chairman MacKay, Commissioner Metz, and David Newton, Esq. agreed that it should be fine as long as the invoice shows it.

Michael Geeser (AAA Nevada) stated those were all his concerns; that he is just looking for clarification so that everyone is on common ground.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) stated that this seems to be a big problem with pattern and practice on the Category A and B tows, but doesn't see why the issue should not be addressed by looking into the complaints of the insurance carriers rather than changing regulations that will affect Category A, B & C tows.

Chairman MacKay called for a 10 minute break at 11:05am the meeting reconvened at 11:19am.

David White (AAA Nevada) had a question regarding the set-out fee: When does the non-consent tow stop and consent tow start?

Commissioner Metz replied that when the set-out is for another company to retrieve the vehicle, when that other company takes possession of the vehicle, it stops the non-consent tow.

Liz Babcock stated that some tariffs have definitions and some do not, some say disabled vehicle, but the carriers are setting out non-disabled vehicles because of liability issues. At the next workshop, changes to regulations regarding tow rates and definitions will be proposed for discussion.

Joe Causey (Custom Towing, CPCN 7061) asked, regarding remuneration [section 25, proposing changes to NAC 706.442 to allow tow carriers to pay law enforcement agencies and the Clark County Department of Aviation for tow referrals], what is the difference between a police department and an apartment manager requesting a tow? As in apartment complexes will want compensation since police get it.

Commissioner Metz noted that the original language did not state anything other than remuneration being pursuant to state and, local, and municipal law.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) stated that currently the only agency is the constable's office and asked if that sets a precedent that if anyone wants to be paid it be set out in law and further stated that the confusion seems to be between Category A and B tows and Category C tows again. He asked if there are different definitions for each category. He stated that currently, walking and tagging is a paid service and asked if it was arbitrary what remuneration is. He also asked how the public would go about determining what remuneration is.

Joe Causey (Custom Towing, CPCN 7061) stated that any remuneration would fall back on the insurance companies because they are paying the remuneration fee.

Clark Whitney (Snap Towing, CPCN 7042) stated that remuneration could be a slippery slope into tow companies doing bad things. He mentioned a bill by the Governor that would have body shops offering remuneration. He further stated that if it must remain there needs to be a provision for the tow operators to recoup the tow charges before being liable for the remuneration and suggested that the language should be "law enforcement" and not "municipality."

Rex Ewing (Ewing Brothers d/b/a Walker Towing, CPCN 7023) stated that he is totally against remuneration. It has never been allowed. The constable's auto wrecking yard can tow abandoned vehicles only, if someone wants to pick up the vehicle they need to go to a licensed tow company. This will only cause rates to be way higher to insurance companies.

Dwight Kazee (City Wide Towing, CPCN 3211) stated that when North Las Vegas instituted a service fee for tows, the tariffs needed to be modified and it caused an expense to the businesses to collect these fees.

Commissioner Metz stated that tow carriers dealing with North Las Vegas were the reason for the proposed amendment.

Dwight Kazee (City Wide Towing, CPCN 3211) stated that with the airport contract only a couple of companies could qualify to bid. The fees imposed by North Las Vegas have an impact on small businesses that must pay them.

Clark Whitney (Snap Towing, CPCN 7042) stated that in other states, police departments have fees to cover police spending time waiting for the tow. He suggested that if this amendment does not go through, the person can go direct to the police department to pay the fee.

Chairman MacKay asked what would happen if the fee is paid by the owner directly to law enforcement. Would there be a release hold? What happens if the fee is not paid?

Clark Whitney (Snap Towing, CPCN 7042) replied if the fee is not paid by the owner, the law enforcement agency just wouldn't collect that fee. It is typical practice that after 30 days, the tow companies request a release of the hold to sell the car at auction. If the owner wishes to buy it back through auction, the agency would collect the funds anyway.

Rex Ewing (Ewing Brothers d/b/a Walker Towing, CPCN 7023) stated that in Utah and Arizona, if a person is arrested for a DUI they have to go to the police and pay a fee before the car can be recovered. He further stated there are many ways the police departments can make their income without involving tow companies to do their paperwork.

Commissioner Metz stated that she tends to agree with Mr. Ewing, Mr. Causey, and Mr. Whitney that it is not fair that if the customer doesn't pay for the release of the vehicle, it cuts into their profits when other cities are being paid directly by the owners. She suggested removal of the language and further stated that the NTA would inform North Las Vegas of intended changes.

Liz Babcock stated her desire to discuss the wording regarding of NAC 706.408 §2, specifically as it relates to day and night rates as well as weekends and holidays. The provision allows only for day and night rates and many tariffs have day rates and then set forth night/weekend/holiday rates.

Commissioner Metz agreed that in almost all of the tariffs, there are daytime and night/weekend/holiday rates.

Liz Babcock recommended either that the regulation wording be changed to accommodate the tariffs or that the tariffs need to be changed. She next raised a question regarding NAC 706.408 §3, the rate for off hook and call out and combined, stating that different operators have different definitions and asked who gets charged.

Commissioner Metz stated that on a non-consent tow it is a flat rate.

Liz Babcock asked if off hook is the same as call out and stated there's no charge on a call out.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) stated that is not a Category C.

Clark Whitney (Snap Towing, CPCN 7042) stated that he knows of at least one company where call out was used in place of off hook and stated that the tariff should be changed to off hook.

Liz Babcock stated that she is trying to make the tariffs comparable from company to company.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) stated that he knows of many carriers that would like to submit definitions.

Liz Babcock stated that she would like definitions in every rate so there are no hidden charges.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) went back to remuneration and stated that it would not just be perceived it would be obvious and explained what he meant by walking and tagging and a charge that the apartment managers would create. He then brought up a question regarding section 10, number 7 and deviation requests and asked if it was done under fully regulated.

Clark Whitney (Snap Towing, CPCN 7042) stated that NRS 706.151 gives the Authority the power to do what they need to make themselves go.

David Newton, Esq. stated that the confusion may be caused by the header language stating NRS 706.151 as it refers to fully regulated carriers.

Commissioner Metz clarified sections NRS 706.351 and NRS 706.151.

David Newton, Esq. does not see a problem because of the various references contained within .311, however if it is causing confusion, perhaps the section could be broken off and made into a new regulation.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) stated that he is all for it and asked whether there would be a form that the NTA puts together.

Jim Day explained the current practice and the checklist he uses for the information that must be provided. He provides the checklist to the carrier requesting the deviation.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) clarified that nothing is really changing, it is just codifying that you can't deviate without permission.

Clark Whitney (Snap Towing, CPCN 7042) had a question regarding not-certificated carriers doing work for hire. He had a tow truck come to his facility that said not-for-hire on the side but was hired by a salvage pool. He asked for clarification on what a salvage car is and stated that lots of cars are deemed totaled at the scene of an accident, this can cut into his business. At some point, a representative of the NTA told carriers this was permissible.

Commissioner Metz put on the record that she has never said this practice is okay.

Clark Whitney (Snap Towing, CPCN 7042) stated that if they're towing for hire, they're towing for hire regardless of what they're towing.

Rex Ewing (Ewing Brothers d/b/a Walker Towing, CPCN 7023) stated his appreciation for the deviation process and wants to keep it in the regulation.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) asked if the deviation must meet a standard and wanted to make sure it would not be for a guy who tells a good story.

Jim Day stated that the primary standard is whether there is a compelling public interest and denials are based on a desire to maintain uniform rates.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) stated that he hopes the standards are objective so that it is not abused.

Chairman MacKay stated that the current practice of the Authority is that it is an extremely high standard and that it doesn't matter if it is an operator with 1 tow car or 1000 tow cars.

Jeff Sawin (Nevada Private Property Impound Association—NPPIA) stated that operators may be looking at this as a way to give someone a break.

Jim Day stated that this is an extraordinary remedy, and to date in 2010 there have been 2 requests and they have both been denied.

Commissioners Klobardanz and Metz stated that they have seen very few in the past 3 years.

Chairman MacKay restated 233B.0382 and asked for any comments related to how the proposed regulations may impact small business.

David Newton, Esq. stated that based on the last set of regulations, he would like to try and get this set finished by midsummer.

Chairman MacKay stated that he would love to have this to the legislative commission by late spring or early summer and extended thanks to everyone for their attendance and input.

Chairman MacKay adjourned the morning workshop at 12:11 p.m.

Chairman MacKay called the afternoon workshop to order at 1:30pm

Chairman MacKay welcomed the attendees and introduced himself, Commissioner Monica Metz, Commissioner Michael Klobardanz, and Administrative Attorney Jim Day. He then described the format for the day's discussions of the draft regulation as an open forum. He also stated that one purpose of the workshop was to take comments in accordance with 233B.0382 regarding how the proposed regulations could impact small businesses.

David Newton, Esq. stated that he wanted to make sure everyone had a copy of the secondary proposal for fuel surcharges.

Chairman MacKay explained that section 1 is new and was not there for the previous workshop. It is related to CES and similar issues.

Kimberly Rushton, Esq. (Cooper Levenson) on behalf of Pink Jeep Tours (CPCN 1078) requested that the commission and referral fees in NAC 706.311 (section 10 subsection 7 of the proposed regulations) be increased from up to 10% to up to 35% for tour operators and that the differentiation between tours and off-road tours be removed.

Donna Tryon (Adventure Photo Tours, CPCN 1047) explained how tours are normally booked and the line of who makes money. About 85% of tours are Grand Canyon tours with commission percentages anywhere from 25% to 35% on interstate tours.

Kimberly Rushton, Esq. (Cooper Levenson) explained how the shortfall is a disadvantage to the carrier.

Chairman MacKay explained how the proposed increase could be considered a marketing expense.

Chairman MacKay stated that you cannot quantify whether going this high could impact adversely in the future.

Kimberly Rushton, Esq. (Cooper Levenson) stated that it should not because the phrasing is “up to” and not mandatory.

Michael Feder, Esq. (AWG Charter Services, CPCN 1068) called to attention number 8 on the suggested amendment list [handout #2] regarding NAC 706.034 and the carrier not being responsible to third party brokers.

David Newton, Esq. explained that it is also an attempt to assure use by third party does not infringe on other types of certificated service.

Chairman MacKay and David Newton, Esq. thanked and congratulated Mr. Feder for doing the lion’s share of coming through with a fix that has been sought after for years.

Commissioner Metz noted for the record that the Legislative commission will likely probably divide the proposed regulations into three different files since the current proposal keeps growing.

Christopher Benner, Esq. (Wright, Finlay & Zak, LLP) stated that it was his understanding the examples at the end of the proposed language would not be included and asked about including such language as “de minimis” and other things that are not related to transportation.

Michael Feder, Esq. (AWG Charter Services, CPCN 1068) stated that the intent is that the transportation services are not the primary purpose of what the third party is there for and the examples were not intended to be all inclusive or exclusive.

Chairman MacKay asked if it should end after “benefit of third party.”

Christopher Benner, Esq. (Wright, Finlay & Zak, LLP) said yes, and there, it is limiting to have the examples.

Commissioner Klobardanz clarified that the period was desired after “broker.”

Christopher Benner, Esq. (Wright, Finlay & Zak, LLP) said that would be a good place to stop.

Michael Feder, Esq. (AWG Charter Services, CPCN 1068) stated there is exclusionary language in section 5 [of NAC 706.034] and suggested it could be moved to section 4 and combined.

Chairman MacKay stated that he does not want to create more work for Commissioner Metz and they should discuss the issues among themselves and submit their positions in writing.

Michael Feder, Esq. (AWG Charter Services, CPCN 1068) and David Newton, Esq., stated that they are ok with taking out the language after “third party,” but the last part must remain as it is critical to assist prosecution and staff. They agreed to meet the next week to further discuss.

Christopher Benner, Esq. (Wright, Finlay & Zak, LLP) asked if there are specific examples from the community that may not have been taken into account.

Paulina Salen (Celebrity Coaches, CPCN 2105) said that this has been a dilemma from a business standpoint because she cannot police what a third party will do with the purchased transportation.

Michael Feder, Esq. (AWG Charter Services, CPCN 1068) stated that this really solidifies the purpose of the drafted regulation and provided an example and primary purpose of transportation for a trade show, the transportation is de minimus to the purpose of a trade show.

Paulina Salen (Celebrity Coaches, CPCN 2105) stated that business is tough and there will be more situations like this for hotels.

Michael Schoenberger (Travel Advantage) agreed with the change, stated that carrier’s asking for too much information about charters is bad for tourism, and recommended that the draft regulation end after “third party.”

Michael Feder, Esq. (AWG Charter Services, CPCN 1068) stated that the purpose of the draft regulation is to avoid carriers having to police their customer’s use of vehicles.

Michael Schoenberger (Travel Advantage) reiterated that examples are a bad idea and it is best to keep it simple.

Chairman MacKay requested that Mr. Feder, Mr. Benner and Mr. Newton get together and draft new language.

Brent Carson, Esq. (Ambassador Limousine, CPCN 1041) had a recommendation regarding NAC 706.171 (identification on vehicles). The current regulation calls for the stenciling of CPCN numbers on vehicles, he proposed to change the marking system from stenciling to a Nevada license plate, stating that this is for several reasons: A gypsy can put a fake CPCN on their car; and When the public calls in to voice a complaint, they think the CPCN is specific to a vehicle and not a company. Something like this allows the public to make more specific complaints. He is looking for feed back before proposing actual language. He submitted workshop exhibits 1, 2, and 3.

Ray Chenoweth (Ambassador Limousine, CPCN 1041) gave a brief history of ICC numbers and CPCN numbers and stated that he thinks they are unsightly and easy to duplicate. If this system were put in place it would help enforcement identify company and vehicle.

Commissioner Kloberdanz asked if the vehicle goes away and is replaced would you use the same plates.

Ray Chenoweth (Ambassador Limousine, CPCN 1041) stated that it shouldn't be a problem to transfer the plates to the replacement vehicle.

Paul Christenson stated that he believes another benefit might be an added kick in state revenue as those who do not have personalized plates would need to obtain them.

Donna Tryon (Adventure Photo Tours, CPCN 1047) stated that the proposal could cause adverse financial impact on businesses and also stated that companies operating with apportioned plates could not obtain personalized plates.

Chairman MacKay asked if anyone had a resolution to the problem of apportioned plates and stated that Reno is very close to California and he could see the issue.

Brent Carson, Esq. (Ambassador Limousine, CPCN 1041) stated that this is a good example of why he was here and suggested that it could be left to the individual carrier.

Chairman MacKay asked what personalized plates cost.

Chief Bradford responded with the DMV prices.

Commissioner Metz asked what would stop someone from getting a plate with a similar code.

Ray Chenoweth (Ambassador Limousine, CPCN 1041) stated that most of the carriers' plates in Las Vegas are already personalized.

Commissioner Metz stated that she called the DMV and there is something called a specialty plate that could say "LIMO" on the left side and only those with a certificate would be able to get those plates, but only 25 specialty plates are allowed in Nevada at one time. All of the 25 slots are currently filled and there is a waiting list. The only other way to get a specialty plate is to go through the legislature.

Tony Clark (24/7 Entertainment Limousines, CPCN's 1088, 1102 & 2073) stated that he thinks it can open a door to the state taxing limousines and suggested that maybe there be a specialized license plate frame.

Brent Carson, Esq. (Ambassador Limousine, CPCN 1041) stated that the CPCN numbers cause confusion with the public.

Ray Chenoweth (Ambassador Limousine, CPCN 1041) stated that the Taxicab Authority stopped confusion with the CPCN numbers by removing them from the vehicles.

Chairman MacKay pointed out that the cabs do have taxicab numbers.

Tony Clark (24/7 Entertainment Limousines, CPCN's 1088, 1102 & 2073) stated that that is why most carriers have personalized plates but it opens the door to increased fees down the road.

Chairman MacKay stated that the Legislature could not do that.

Tony Clark (24/7 Entertainment Limousines, CPCN's 1088, 1102 & 2073) asked if the issue could be brought before the Legislature so there would not be an added cost to carriers.

Robert Winner, Esq. (Ambassador Limousine, CPCN 1041) stated that the number of attorneys Mr. Chenoweth brought should demonstrate how serious he is that this is a good idea for running a business and if there is someone on his staff that is messing up, he wants him to go.

Chairman MacKay asked what prevents someone from going and getting one of these plates in the next successive number and requested that the parties come back with some draft language for further discussion.

Commissioner Kloberdanz stated that he recalls specific instances in the past where gypsies have pirated personalized plate numbers.

Ray Chenoweth (Ambassador Limousine, CPCN 1041) and Paul Christenson suggested that the DMV could require proof of CPCN to be shown prior to being issued the plates.

Commissioner Metz asked when the DMV did away with specialty motor carrier plates.

Ray Chenoweth (Ambassador Limousine, CPCN 1041) responded that it was probably in 1971.

Alan Waxler (AWG Charter Services, CPCN 1068) stated that he likes the idea but also likes his personalized plates and suggested that the CPCN could be at the bottom of the plate.

Kellie McKinley (Seiji Limousine, CPCN 1111) stated that frames would be too easy to duplicate.

Will Mares (Scooter Moves, CPCN 1065) stated that he has been trying for years to obtain personalized plates and if it were made optional he would submit for the plates and request to remove his CPCN.

Kimberly Rushton, Esq. (Cooper Levenson) on behalf of the Limousine Operators Association (LOA) asked a question regarding the CES regulation [section 1 of the proposed regulations, related to requests for increasing fleet size during special events].

Chairman MacKay and Kimberly Rushton, Esq. (Cooper Levenson) discussed the regulation as it relates to demonstrating the market and 706.391.

Robert Winner, Esq. (Ambassador Limousine, CPCN 1041) stated that the topic of deviation does not mean get around or detour, it is a side-step; the purpose of that regulation has been met by another showing and that is a deviation. This is creating temporary authority and that is not legal, it must be done by application, there is no temporary authority, you are either modifying or not. He further stated that he has multiple issues with the language in subsections 1, 2, and 3.

Commissioner Metz and Kimberly Rushton, Esq. (Cooper Levenson) responded to Mr. Winner's concerns, stating that the regulation still requires an application and does not alleviate the applicant's responsibility to show that he meets the requirements of NRS 706.391.

Robert Winner, Esq. (Ambassador Limousine, CPCN 1041) asked if this short changes anything that is in regulation for what must be in an application for authority.

Kimberly Rushton, Esq. (Cooper Levenson) stated that this could be procedural in nature rather than a substantive issue.

Alan Waxler (AWG Charter Services, CPCN 1068) stated that from a business standpoint, CES is a very unique time and convention and a set timeline can cause issues, and it is also bad to consider trying to sell people vehicles they do not want. He further stated his issues with how CES was handled in the most recent year and stated that the customers at CES are a very unique. He wishes to seek the best solution for Las Vegas.

Kimberly Rushton, Esq. (Cooper Levenson) stated that the LOA sees this as having a serious financial impact.

David Newton, Esq. asked, regarding the LOA's position, whether it was only potential impact because no one knows when or if this procedure would be used.

Kimberly Rushton, Esq. (Cooper Levenson) stated that more teeth need to be added to the regulation to prove that vehicles are not readily available, more-so than clients not liking blue cars and only wanting black cars.

Michael Feder, Esq. (AWG Charter Services, CPCN 1068) asked how you prove how many vehicles are available.

Chairman MacKay called for a brief recess at 3:27pm the workshop resumed at 3:41pm.

Neil Tomlinson, Esq. (Las Vegas Limousines, CPCN 2258) stated that he agrees with Mr. Winner on the statute discussion earlier and that he understands what Mr. Waxler wants to do. He further stated that a regulation cannot circumvent NRS 706.391. Another issue is that if this were to be enacted, applications could come in every month; where is the line drawn on special events?

Chairman MacKay and Commissioner Metz stated that this is not trying to circumvent NRS 706.391.

Neil Tomlinson, Esq. (Las Vegas Limousines, CPCN 2258) stated that this is not drafted to be used in conjunction with NRS 706.391 and that the statute does not say anything about temporary modification.

David Newton, Esq. stated that the statute can be read broadly or narrowly and does not need to specify temporary or permanent.

Neil Tomlinson, Esq. (Las Vegas Limousines, CPCN 2258) stated that the Taxicab Authority has permanent and temporary outlined.

David Newton, Esq. stated that this Agency does not have medallions and operates differently than the Taxicab Authority regarding permanent and temporary expansions.

Michael Feder, Esq. (AWG Charter Services, CPCN 1068) stated that the legislature must have had purpose in not stating "permanent."

Kimberly Rushton, Esq. (Cooper Levenson) stated that the industry as a whole would like to meet and collectively propose different language for section 1.

Chairman MacKay stated that the last place he wants to end up is in a court dispute over the language, so if the industry can work together, that would be great.

Kimberly Rushton, Esq. (Cooper Levenson) stated that the current language can be used as a starting point.

Alan Waxler (AWG Charter Services, CPCN 1068) stated that there is a residual effect that is more than just serving the people of CES and wants to discuss a better way to do it.

Chairman MacKay stated that there had always been discussion, but no intervention until this year.

Tony Clark (24/7 Entertainment Limousines, CPCN's 1088, 1102 & 2073) stated that it could be put under a special authority.

Alan Waxler (AWG Charter Services, CPCN 1068) said that there is not a hotel who will not oversell if it can.

Robert Winner, Esq. (Ambassador Limousine, CPCN 1041) asked if it was necessary to say "60(b)" in the proposed language [of section 18, proposed changes to NAC 706.3967] as it is a judgment call for the hearing officer.

Commissioner Metz stated that there were several interventions at the same time that were filed late and there was no existing standard, which led to NRCP 60(b) and that is why the change was written, to simply codify existing policy.

Robert Winner, Esq. (Ambassador Limousine, CPCN 1041) responded that it is still the hearing officer's call. He further stated that under section 19, subsection 2 [proposed changes to NAC 706.3968] all the tools for PLTI are what you have now and you have to set a prehearing conference, not just issue a discovery order.

Kimberly Rushton, Esq. (Cooper Levenson) stated that because of the concept of an intervener in the administrative process they should be let in as quickly as possible.

Chairman MacKay asked if the 90 days proposed by section 19 is too long.

Kimberly Rushton (Cooper Levenson) responded yes.

Commissioner Metz stated that the general rule is 60 days.

Brent Carson, Esq. (Ambassador Limousine, CPCN 1041) said that he sees nothing wrong with 30 days, stating that it is either approved or not.

Robert Winner, Esq. (Ambassador Limousine, CPCN 1041) stated that he disagrees with 30 days; he would prefer it to say prompt or timely and not be held to hard and fast numbers.

Chairman MacKay and Liz Babcock discussed a previous hearing where staff's position changed quite bit on the Application due to an intervener's input.

David Newton, Esq. requested, on behalf of staff, that the hearing order listed in section 20 [proposed changes to NAC 706.3987] be changed so that Staff may go last and have all information before making a recommendation. He also stated that if Staff is required to know everything that occurs during discovery, then it can affect and delay the discovery process.

Kimberly Rushton, Esq. (Cooper Levenson) recommended that 15 days prior to the hearing there could be a closing conference with all the parties.

Commissioner Metz stated that a change in order does not change the language allowing the hearing officer discretion to change the order.

Kimberly Rushton, Esq. (Cooper Levenson) respectfully disagreed.

David Newton, Esq. stated that it creates a chicken and egg scenario.

Commissioner Metz stated that this language was added at Staff's request and mirrors changes made by the Public Utilities Commission to their regulation providing for order of parties at hearing.

Kimberly Rushton, Esq. (Cooper Levenson) wants to assure that there is transparency between the parties and believes that this can be accomplished through procedural changes.

Tony Clark (24/7 Entertainment Limousines, CPCN's 1088, 1102 & 2073) stated that the language of "timely manner" concerns him because interveners can be counted on regularly and he does not want to see too many procedures added to the application process that can extend it excessively.

Liz Babock stated that the saying "10% of the applicants take up 90% of the time" is true.

Tony Clark (24/7 Entertainment Limousines, CPCN's 1088, 1102 & 2073) stated that the Applicants are better off knowing as soon as possible and not with a drawn out process.

Chairman MacKay said that there must be a semblance of fairness.

Kimberly Rushton, Esq. (Cooper Levenson) mentioned an application that was based on a certain event that never came to fruition but was on the books for two years. It was withdrawn when an intervener began requesting discovery.

Tony Clark (24/7 Entertainment Limousines, CPCN's 1088, 1102 & 2073) just wants to make sure there are not loopholes to drag out the application process.

Kellie McKinley (Seiji Limousine, CPCN 1111) asked a question about section 2 [proposing addition to NAC 706 requiring carriers to use time clocks to record driver hours of service] and described her current method of timekeeping.

Chairman MacKay and Commissioner Metz stated that, by her description, she should already be in compliance.

Tony Clark (24/7 Entertainment Limousines, CPCN's 1088, 1102 & 2073) asked if a time clock can be submitted for approval.

Commissioner Metz replied that there will be a compliance period wherein Staff can research the proposed equipment.

Kellie McKinley (Seiji Limousine, CPCN 1111) made a comment regarding CES, business growth and the free market and that every application should be looked at on its own merits. She does appreciate what the Authority does for the industry and had a question regarding zones and dead head charges [suggested changes, handout #2, number 7].

Commissioner Metz stated that it had not been brought up for discussion at a workshop and that is why she had not drafted any language.

Liz Babcock stated that there was a tariff approved based on zip codes.

Tony Clark (24/7 Entertainment Limousines, CPCN's 1088, 1102 & 2073) stated that he knows of one that is by distance from McCarran Airport.

Kellie McKinley (Seiji Limousine, CPCN 1111) asked if there were plans to make it more standard throughout the industry to assist from an enforcement standpoint.

Brent Carson, Esq. (Ambassador Limousine, CPCN 1041) said that he does not understand why the issue of fuel surcharge is being dealt with because he believes if it is not broken don't fix it [suggested changes, handout #2, number 4].

Liz Babcock stated that Staff's position has not changed and the surcharge is to account for spikes in fuel prices.

Commissioner Metz stated that she requested Staff create and propose a formula not to include a set table and this is the result. The set table would require rulemaking if adjustments need to be made whereas the formula will be keep up with changes in prices each year.

Brent Carson, Esq. (Ambassador Limousine, CPCN 1041) stated his issue with the setting of a baseline and the way it is added to before it kicks in.

Commissioner Metz believes the price of fuel should be accounted for in the tariff.

Tony Clark (24/7 Entertainment Limousines, CPCN's 1088, 1102 & 2073) recommended that it be calculated as a percentage increase.

Commissioner Metz stated that Staff will definitely look into the percentage suggestion.

Alan Waxler (AWG Charter Services, CPCN 1068) stated that hotels hate the fuel surcharge.

Chairman MacKay asked if it was because they do not like a “surprise charge?”

Alan Waxler (AWG Charter Services, CPCN 1068) would like to be able to include a fuel surcharge in whatever your flat rate is [rather than listing it separately on signs as “fuel surcharge”].

Chairman MacKay, Commissioner Metz, and Liz Babcock stated that it can be removed from the tariff and is not mandatory.

Will Mares (Scooter Moves, CPCN 1065) stated that it is either in the tariff or not, but once in the tariff it must be charged and corporate clients don’t like varying rates.

Kimberly Rushton (Cooper Levenson) stated in support of Mr. Waxler there was bid that went out that specifically stated that it could not contain a fuel surcharge. She said she would like to meet with Mr. Newton about language where it may not always be used.

Tony Clark (24/7 Entertainment Limousines, CPCN’s 1088, 1102 & 2073) said that it could be made into a corporate client rate.

Yvonne Shelton asked if the hourly rate accounts for any gas prices.

Alan Waxler (AWG Charter Services, CPCN 1068) stated that it can contain care and maintenance and fuel among other things.

Tony Clark (24/7 Entertainment Limousines, CPCN’s 1088, 1102 & 2073) stated that the tariff includes fuel but the purpose of the surcharge is so that the tariffs do not need to be modified every time fuel increases.

Alan Waxler (AWG Charter Services, CPCN 1068) stated that the fuel industry is crazy and difficult to keep up with. He believes that the Nevada transportation rates are low compared to the industry. He also asked if the Agency has reached out to the Hotels to explain more of what goes on, for example, the issues with large events.

Chairman MacKay stated that he has not had any types of workshops or anything of that nature but there is some communication.

Chief Bradford stated that he is in a couple organizations.

David Newton, Esq. stated that this discussion would be more appropriate at an Agenda rather than a legislative workshop.

Chairman MacKay thanked everyone for attending.

Commissioner Metz said the next workshop is tentatively scheduled in a month.

Chairman MacKay adjourned the workshop at 5:03pm.